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The Honorable Andrew J. Peck on the Record with Predictive Coding: Early Headlines Get it Wrong!

posted by [Mikki Tomlinson](#) at 8:55am on Feb 15th, 2012



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As hinted to be forthcoming during the LTNY [Man vs. Machine: The Promise/Challenge of Predictive Coding & Other Disruptive Technologies](#) session, [The Honorable Andrew J. Peck](#), United States Magistrate Judge for the Southern District of New York, is now on record on the topic of Predictive Coding – Technology Assisted Review (“PC-TAR”) in the *Da Silva Moore v. Publicis Groupe et al.* case. Word of the ruling traveled quickly throughout the eDiscovery blogosphere early yesterday. But the headlines got it wrong!

Early reports claimed that [Judge Peck](#) ordered the use of PC-TAR. Unfortunately, it appears that claim stuck as evidenced by the many bloggers that have reported the same information. But it is wrong! The ruling is in no way a mandate or an order to use PC-TAR.

The parties in the *Da Silva Moore v. Publicis Groupe et al.* case appeared before [Judge Peck](#) on February 8, 2012, to resolve discovery disputes, including their disagreement on the approach and methodologies to be used in their planned PC-TAR document review. The parties agreed to use PC-TAR long before the February 8, 2012 hearing. Their discovery disputes related to PC-TAR are not whether they can or should use the advanced technology. Rather, the disputes relate to how to use the technology. A copy of the transcript can be found [here](#). (Note: highlights in the document are not eDJ's.) I urge you to read it for yourself.

eDJ experts will continue to blog on the ruling and its impact over the coming days and weeks. We feel strongly, however, that it is important to first set the record straight about inaccurate statements that are being published. Again, I urge you to read the [transcript](#) for yourself.

There were multiple discovery disputes addressed at the hearing, and rulings on those issues can be found throughout the transcript. Unfortunately, the format of the rulings – which is a hearing transcript rather than a formal, written opinion – opens the door to pulling quotes and quips without context. The transcript requires a full review in order to fully understand the issues and decisions. [Judge Peck](#) initially claimed that he would not issue a written order (see [Transcript](#), pages 22-23). He made this statement before the arguments over PC-TAR were presented. After those arguments were presented, he stated that “for the benefit of the greater bar” he may issue a written opinion on “some of what we did today” (see [Transcript](#), page 93, lines 8-10). I hope that he does write a formal opinion. Not only because of the important issues related to cooperation and PC-TAR, but also to clarify misstatements being made in the blogosphere.

When I started writing this blog yesterday afternoon, I reached out to an industry veteran that I thought would be interested in providing a quote. I expressed my frustration that inaccurate statements are being reported in the blogosphere and spreading like wildfire. His response was somewhat in jest, but very true, so I will quote him anonymously: “Unfortunately, in the age of the sound bite, he that writes history writes history.”

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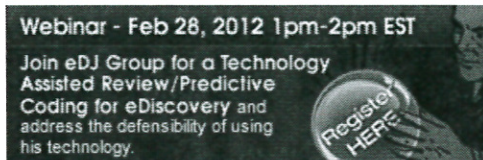
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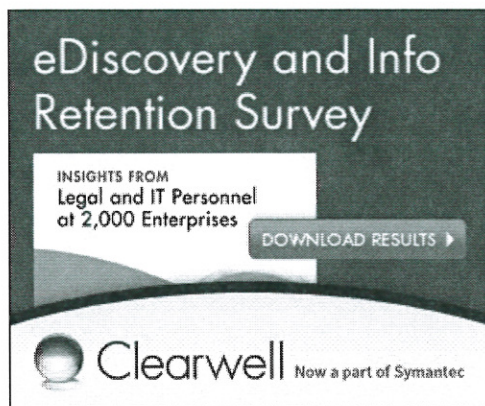
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